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IN THE

Supreme Court of the United States

NOLEN R. BREEDLOVE,

Appellant,

vs.

T. EARL SUTTLES, as TAX COLLECTOR,

Appellee.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL

In an appeal from a final judgment of the Supreme Court of Georgia, affirming a judgment by the Superior Court of Fulton County in that State, the appellee now moves to dismiss on technical grounds. The judgment denied the appellant's petition for mandamus to require the appellee to permit the appellant to register to vote for electors for President and Vice President of the United States and Senators and Representatives in Congress, without paying the poll tax required by the Constitution and Statutes of Georgia. The appellant contended that these provisions were invalid as being in contravention of the Preamble to the Constitution of the United States; Article I, Section 8, Clause 1; Article I, Section 9, Clause 4; Article IV, Section 2, Clause 1; Article IV, Section 4; Article VI, Clause 2 thereof; and the Fourteenth, Fifteenth and Nineteenth Amendments thereto. The appellee's oral motion to dismiss the petition was sustained in the lower Court. No testimony was taken. The judgment was affirmed by the Supreme Court of Georgia on the ground that the imposition of the poll tax was not violative of the aforementioned constitutional provisions.

The constitutional and statutory provisions objected to read as follows:

> Art. II, Sec. 1, Par. 3. "To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law . . . "
>
> 34-103. "I do swear, or affirm, that . . . I have paid all poll taxes which I have had an opportunity of paying agreeably to law; . . ." (Acts 1894, pp. 116; Acts 1908, pp. 58; Acts 1913, pp. 115; Const. Art. II, Sec. 1, Par. III and Section 2-603.)
>
> 34-113. "No one shall be allowed to register for a single election unless he shall have paid all poll taxes due by him at least six months before the date of the election." (Acts 1908, pp. 58; Const., Art. II, Sec. 1, Par. III and Sec. 2-603.)
>
> 34-114. "No tax collector shall allow any person to sign his name in the voters' book unless he is satisfied, at the time, that the poll taxes due by said voter are paid and that he is otherwise qualified." (Acts 1894, pp. 115, 117; Const., Art. II, Sec. 1, Par. III and Sec. 2-603.)
>
> 92-108. "There shall be levied and collected each year upon every inhabitant of the State between the ages of 21 and 60 years, on the day fixed for the return of property for taxation, a poll tax of $1.00, . . .: Provided, that this tax shall not be demanded of . . . female inhabitants who do not register for voting." (Acts 1927, pp. 57.)

The appellant now assigns as error the ruling that the above-quoted provisions of the Georgia Constitution and Statutes do not:

1. Violate the constitutional guarantee of a republican form of government required by Article IV, Section 4;

2. Deprive him of liberty without due process of law in violation of the Fourteenth Amendment;

3. Abridge his privileges and immunities as a citizen of the United States in violation of the Fourteenth Amendment;

4. Deny him the equal protection of the laws in violation of the Fourteenth Amendment;

5. Abridge his right to vote on account of sex, in violation of the Nineteenth Amendment.

The Georgia laws which the appellant contends to be repugnant to the several provisions of the Constitution of the United States set out herein have arbitrarily restricted the vote in Georgia to eight per cent of the population, whereas an average of thirty-nine per cent of the population votes in states which do not require the payment of a poll tax as a prerequisite to the right to register and vote for the electors of the President and Vice President of the United States and the Members of the Congress. These and other arbitrary, unreasonable and capricious restrictions and discriminations, more fully set out in the appellant's Statement of Points to be Relied on, raise serious, substantial and undetermined federal questions which materially affect appellant and millions of others similarly situated.

The appellant contends that the privilege of voting for federal officials is one to which he is entitled, unrestricted by a tax arbitrarily imposed through hostile state invasion of his rights as a citizen of the United States. As such citizen he is entitled to participate in the choice of electors of the Presi-

dent and the Vice President of the United States and of Senators and Representatives in Congress and no state may exercise its taxing power so as to destroy this privilege. If the tax imposed by Georgia were increased to a high degree, as it can be if valid, it could easily be used for the purpose of destroying the elective franchise altogether, by reducing the percentage of voters to even less than eight per cent of the population of the State. Whatever property and other economic restrictions on the franchise may have been upheld in earlier periods of our history, the admission today that a state has the power to prevent its poorer inhabitants from participating in the choice of federal officials would be totally contrary to the contemporary spirit of American institutions, and inconsistent with the purposes announced in the Preamble to the United States Constitution.

The appellant cites the following decisions of the Supreme Court of the United States as indicating that that tribunal has jurisdiction to review the final judgment of the Supreme Court of the State of Georgia, which judgment expressly upheld the validity of the provision in the State Constitution and Statutes drawn in question in the original mandamus proceeding:

Colgate v. Harvey, 296 U. S. 404.
Miller v. Schoene, 276 U. S. 272, 48 S. Ct. 410.
Western Turf Association v. Greenberg, 204 U. S. 359.
American Express Co. v. Michigan, 177 U. S. 440.
Hartman v. Greenhow, 102 U. S. 672.

The constitutional questions raised are serious and not frivolous.

Zucht v. King, 260 U. S. 174, 176.
Louisville & Nashville Railroad v. Melton, 218 U. S. 36, 49.

The Supreme Court has never considered the constitutionality of a state poll tax. Prior decisions upholding the various qualifications imposed by states on their voters have sustained statutes which were less objectionable in character, in that they did not seek to limit the franchise by discriminating against impecunious members of the community. The privilege of a citizen of the United States to vote for federal officials is one which the United States Constitution protects from abridgment by a state's imposition of a heavy economic burden. The right to vote for such officials is, under twentieth century conditions, one which inheres in the appellant by reason of his United States citizenship.

The Supreme Court has recently expanded the application of the privileges and immunities clause of the Fourteenth Amendment.

Colgate v. Harvey, 296 U. S. 404.

It therefore becomes appropriate for the Court to reconsider earlier decisions, none of which involved the poll tax, holding that the right of suffrage is solely a matter of state concern. Political inequality based upon economic inequality is contrary to the basic postulates of the American democratic system.

The incidence of the poll tax falls upon the appellant much more heavily than on members of the opposite sex in that if he desires to register in a given year, he must first pay all taxes accumulated during prior years in which he did not register at all, whereas a female voter is only required to pay the poll tax for the year in which she actually registers. This is wholly an arbitrary and unreasonable classification contrary to the equal protection clause of the Fourteenth Amendment, and also constitutes an abridgment of the right to vote

by reason of sex contrary to the Nineteenth Amendment. The seventh assignment of error, which charges a violation of the Nineteenth Amendment, is an adequate assignment of the failure of the State Court to find that the Georgia Statute involves a discriminatory abridgment of the right to vote. It is not, as the appellee has asserted, a mere objection to an unequal distribution of the tax burden. Appellant's original petition and appeal papers show that he was denied the right to register to vote. Since our laws require that a person be registered before he can vote, it automatically follows that he is denied the right to vote. The case of *Seaboard Air Line Railway Company v. Watson*, 287 U. S. 86, cited by the appellee, contains an assignment of error far more lacking in particularity than the assignment presented in the appellant's papers.

The appellee has moved to dismiss, contending, in the first place, that the appellant's Statement Disclosing Jurisdiction contains neither the date of the judgment sought to be reviewed nor the date on which the application for this appeal was presented, as required by Rule 12 of the Supreme Court. The appellee is mistaken in asserting that the date of the judgment is omitted from the jurisdictional statement. That date (October 14th, 1936) is properly given at the top of the second page of the statement.

While it is true that the date on which the application for appeal was presented (January 13th, 1937) was inadvertently omitted from the Statement Disclosing Jurisdiction, the requirement was nevertheless substantially complied with, since this date appears in a number of other places in the moving papers, the Petition for Appeal, Appellant's Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof, the Praecipe, the Order of the Court Allowing the Appeal, the Citation of the

Court giving Notice of the Appeal and the Notice to Appellee pursuant to Rule 12, paragraph 2 of the Rules of the Supreme Court of the United States serving appellee with copies of the Petition for Appeal, Order Allowing the Appeal, Assignments of Error, and Statement Disclosing Jurisdiction in said case all bearing the date of January 13th, 1937. In addition thereto, appellee personally acknowledged service upon the Praecipe, Appellant's Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof and the Notice to Appellee serving him with copies of all the appeal papers including the Statement Disclosing Jurisdiction on January 13th, 1937, and said date appears on the original of said papers immediately above the signature of appellee. Also, the Statement Disclosing Jurisdiction and all other papers disclose that they were filed in the office of the Clerk of the Supreme Court of Georgia on January 13th, 1937. The appellant assumes that the purpose of this provision in the Rules is to make it apparent to the Court that the appeal was filed within the requisite ninety days. Since the latter date is elsewhere indicated and the time limitation was scrupulously observed, the appellant respectfully suggests that the regrettable omission of the date of presentation from a particular page, being merely a technical error, should not cause the Court to dismiss the appeal.

The appellee also objects that the jurisdictional statement does not contain sufficiently specific references to or quotations from the record. The appellant respectfully submits that the requirements of this Section of Rule 12 have been substantially complied with. No testimony was taken in the lower Court and appellant's counsel believes that this rule applies particularly to quotations from testimony. The entire record of the proceedings in the lower Court, which embraces nothing more than the petition and the amendments thereto

with the Judge's order of dismissal thereon upon the oral motion of counsel for defendant in the lower Court that the same set forth no cause of action (the oral motion under the Georgia practice being the equivalent of a general demurrer) contains only twenty-two pages. Moreover, the appellant has expressly specified those portions of the record which he believes to be necessary to a consideration of the points raised on the appeal, sufficient to support his assertions that the rulings of the lower Courts were of a nature to satisfy the statutory provisions relating to the jurisdiction of the Supreme Court of the United States (pp. 4 of the appellant's paper entitled "Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof.")

The appellant's failure to append the opinion of the Supreme Court of Georgia was wholly due to inadvertence, caused primarily by the fact that a misunderstanding arose as to the responsibility for fulfilling this requirement as between the two attorneys for the appellant, who live in the widely separated cities of Atlanta and New York. Both the Praecipe and the Statement of Points to be Relied on and the Parts of the Record Necessary for the Consideration thereof filed with the Clerk of the Supreme Court of Georgia for transmission to the Supreme Court of the United States contain the request that the full text of the judgment of the Supreme Court of Georgia be incorporated as a part of the appeal of appellant. This was done upon the construction placed upon the rules by appellant's counsel that the Statement Disclosing Jurisdiction and the opinion of the Supreme Court of Georgia transmitted to Washington pursuant to the Praecipe would both be reduced to printed form under the supervision of the Clerk of the Supreme Court of the United

States, and that to include the full text of the decision in appellant's Statement Disclosing Jurisdiction and also specify in the Praecipe that it should be made a part of the record by the Clerk in the Supreme Court of Georgia would cause it to appear twice in the appeal upon its arrival in Washington. It is therefore believed that the omission of the opinion from the Statement Disclosing Jurisdiction can not in any conceivable manner prejudice the rights of the appellee, but in order to satisfy the technical objections, we respectfully ask leave of the Court to permit the incorporation of the full Georgia Supreme Court opinion, which is appended to this brief as Exhibit "a," in the original record on appeal when that is forwarded to the printer. In support of this request, the appellant cites *Section* 269 *of the Judicial Code* (28 U.S.C.A. Sec. 391) which reads as follows:

> "* * * On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the Court shall give judgment after an examination of the entire record before the Court, without regard to technical errors, or exceptions which do not affect the substantial rights of the parties."

The appellee is mistaken in asserting that the assignments of error are not sufficiently specific. The requirement of Rule 9 that the assignments "set out separately and particularly" each error asserted, has been fully complied with. The purpose of the assignment is not to detail the precise reasons why an appellant believes that the respective constitutional rights asserted were denied by the judgment of a State Court; it is rather, to indicate on which constitutional grounds he is seeking a reversal and to limit the argument in the Supreme Court to these grounds.

Phillips & Colby Construction Co. v. Seymour,
91 U. S. 646, 648.

The practice of restating, in the formal assignments, the reasons why a lower Court's action is deemed to have been erroneous is too cumbersome and argumentative and has not met with the approval of the Courts.

Chicago, Milwaukee & St. Paul Railroad V. Bennett, 181 Fed. 799.

Atchison, Topeka & Santa Fé Railroad v. Meyers, 76 Fed. 443.

It is enough to specify the particular clauses of the Constitution on which the appellant intends to rely, in order that the Court and the appellee may readily perceive what the issues are to be. The appellee's quotation from *Sugarman v. The United States,* 249 U. S. 182, 184, is not only incorrect, but also inappropriate to the instant case. The Court was not, in the quoted passage, ruling upon the sufficiency of the form of the appellant's assignments, but was asserting that since the constitutional questions raised were unsubstantial in that particular case, the mere assertion of a claim would not warrant the Court's assuming jurisdiction.

Finally, the Supreme Court's own rules make it clear that the Court will not necessarily treat an appellant's failure to satisfy the detailed requirements of Rule 12 in the first instance as an obstacle to its assuming jurisdiction. The recent amendment to Rule 27 permits counsel to correct such a failure at the time the final brief is filed, as little as three weeks before a case is called for hearing.

> "If paragraph 1 of Rule 12 has not been complied with, a concise statement of the grounds on which the jurisdiction of this Court is invoked, embodying all that is required to be set forth in the statement described in that paragraph,"

may be included in the later brief.

The appellee is therefore not warranted in moving for dismissal on the technical grounds presented in his motion, and the appellant respectfully requests that the Court permit him to amend his appeal papers so as to cure any such purely technical defects as may presently appear therein.

The appellee also contends that the case below was not determined solely on the federal constitutional ground, stating that his oral motion to dismiss challenged the appellant's right to relief "upon any grounds whatsoever." Whatever may have been the grounds of the appellant's motion, it is clear from the opinion of the Georgia Supreme Court appended hereto that the decision was itself based upon the constitutional question and on that alone. It is the language of the highest state Court and not that of a party which must be looked to to determine the grounds of a decision.

> "It is well-settled that where the state Court does not decide against the plaintiff in error upon an independent state ground, but, deeming the Federal question to be before it, actually entertains it and decides it adversely to the federal right asserted, this Court has jurisdiction to review the judgment, assuming it to be a final judgment as it is here."
>
> *Rogers v. Hennepin County*, 240 U. S. 184, 188.
>
> "Mere conjecture may not be indulged in for the purpose of concluding that because there was a potentiality of considering the case from a non-Federal point of view, therefore it was considered and decided in that aspect."
>
> *St. Louis & Iron Mt. R. R. v. McWhirter*,
> 229 U. S. 265, 276.

The important consideration is whether the Federal constitutional question was necessarily passed on by the highest Court of the State, and not whether it was raised or adjudicated in the trial Court.

Whitfield v. Ohio, 297 U. S. 431, 436.
Home Insurance Co. v. Dick, 281 U. S. 397, 407.
Land and Water Co. v. San Jose Ranch, 189 U. S. 177.

While we believe that the decisions and rules of the Supreme Court cited above are sufficient to dissolve appellee's motion of any merit which it might appear to have from a cursory examination thereof, we, nevertheless, desire to impress upon the Court the seriousness of the questions raised by appellant from the standpoint of the effect of the laws complained of upon the citizens of Georgia and the South. The right of a State to restrict the privilege of citizens to vote through unreasonable, capricious and arbitrary legislation to eight per cent of the population, when thirty-nine per cent votes in States which do not impose such burdens upon the people in national elections, has never been passed upon by this Court upon the basis presented in this case. The laws of which appellant complains affect millions of persons in Georgia and other Southern States. The tax imposed is not levied or collected as is customary under all other forms of tax legislation, i. e., through levy and pursuit, but is aimed directly toward restricting the right of impecunious citizens to vote in national elections and otherwise. These laws deprive the majority of the poorer citizens of Georgia and other sections of the South of substantial economic, educational and political privileges to which they would be otherwise entitled, thus imposing upon them an intolerable tyranny as set out in the original petition, which will be a part of the record when this case is considered by this Court upon its

merits. It would be a grave injustice to millions of unfortunate citizens for this Court to refuse jurisdiction of the case upon the purely technical grounds urged in appellee's motion.

WHEREFORE, the appellant prays that the appellee's motion to dismiss the appeal be denied and that the Court do take jurisdiction of the case and allow the appeal.

Respectfully submitted,

J. IRA HARRELSON,
ARTHUR GARFIELD HAYS,
Counsel for Appellant.

STATE OF GEORGIA,
COUNTY OF FULTON.

I hereby certify that I am of counsel for the appellant in these proceedings, and that I have this day served a copy of the foregoing brief on counsel for appellee by mailing a copy of the same to Charles B. Shelton, Ralph H. Pharr and W. S. Northcutt, 504 First National Bank Building, Atlanta, Georgia, this the 10th day of February, 1937.

J. IRA HARRELSON,
Attorney for Appellant.

EXHIBIT "A"

BREEDLOVE v. SUTTLES, Tax Collector

No. 11456

Supreme Court of Georgia

Oct. 14, 1936

Constitutional Law, Key ½, 84, 91, 205(1), 274;

Elections, Key 18;

States, Key 4;

Taxation, Key 37, 40(1).

Statutes and constitutional provisions requiring payment of poll tax as prerequisite to right to register and vote *held* not violative of due process clause of Federal Constitution, of federal constitutional provisions guaranteeing a republican form of government to every state, requiring uniform taxation and levying of direct taxes in proportion to census, relating to citizens' privileges, making Federal Constitution supreme law of land, relating to right to vote, permitting both sexes to vote, and relating to rights of conscience and right to petition government, or of provisions of State Constitution requiring uniform taxation and recognizing Federal Constitution as supreme law of land (Code 1933, Sections 34-103, 34-113, 34-114, 92-108; Const. Ga. art. 2, sec. 1, par. 3; art. 7, sec. 2, par. 1; art. 12, sec. 1, par. 1; Const. U. S. art. 1, sec. 8, cl. 1; art. 1, sec. 9, cl. 4; art. 4, sec. 2, cl. 1; art. 4, sec. 4; art. 6, cl. 2; Amends. 1; 14, sec. 1; 15, sec. 1; 19.)

SYLLABUS BY THE COURT

The court properly sustained the motion to dismiss the petition in this case.

Error from Superior Court, Fulton County; Hugh M. Dorsey, Judge.

Mandamus proceeding by Nolen R. Breedlove against T. E. Suttles, tax collector. To review a judgment for defendant, plaintiff brings error.

Judgment in accordance with opinion.

Nolen R. Breedlove, alleging himself to be 28 years of age and to have resided in Fulton county continuously for more than 7 years, filed his petition for mandamus against T. E. Suttles, tax collector of Fulton county, to require said officer to allow petitioner to register for elections without the payment of poll taxes and without exacting of him the oath prescribed by statute, containing the provision "that I have paid all poll-taxes which I have had an opportunity of paying agreeably to law." The petitioner contends that article 2, section 1, paragraph 3, of the Constitution of Georgia, (Code, 2-603), as amended, and all statutes enacted in pursuance thereof, to wit, Code Sections 34-103, 34-113, 34-114, 92-108, requiring the payment of the poll tax as a prerequisite to the right to register and vote for candidates seeking the offices of President and members of Congress, are contrary to and in derogation of the preamble and the following provisions of the Constitution of the United States: Article 4, section 4, guaranteeing to every state a republican form of government; article 1, section 8, clause 1, as to uniform tax; article 1, section 9, clause 4, which prohibits the laying of capitation or other direct tax unless it is in proportion to the census or enumeration; article 4, section 2, clause 1, declaring that the citizens of each state shall be entitled to all privileges and immunities of the citizens in the several states; article 6, clause 2, declaring the Federal Constitution to be

the supreme law of the land; amendment 14, section 1, prohibiting states making or enforcing laws abridging the privileges and immunities of citizens of the United States; amendment 15, section 1, guaranteeing the rights of citizens without regard to race, color, or previous condition of servitude; amendment 19, prohibiting any laws denying or abridging the right of citizens to vote on account of sex; the First Amendment, relating to the rights of conscience and the right to petition the government for a redress of grievances; the Fourteenth Amendment, as to the due process of law; the Fifteenth Amendment, that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

And the foregoing statutes in regard to registration and the payment of poll taxes are attacked as contrary to and in violation of the uniform tax requirement prescribed by our State Constitution, that all taxes shall be ad valorem; and it is alleged that these statutes are contrary to the First Amendment to the Constitution of the United States as to "rights of conscience, freedom of the press," etc., and contrary to that section of our State Constitution (article 12, sec. 1, par. 1) which recognizes the Constitution of the United States as the supreme law of the land; that article 2, section 1, paragraph 3, of the Constitution of Georgia, as amended, is in conflict with other provisions of our State Constitution, to wit, article 12, section 1, and article 7, section 2, paragraph 1; that said paragraph of the State Constitution, and the laws enacted thereunder, are in violation of the due process clause of the Fourteenth Amendment to the United States Constitution and the clause in said amendment which defines the word "liberty." An oral motion to dismiss the petition was sustained, and the plaintiff excepted.

J. Ira Harrelson, of Atlanta, for plaintiff in error.

Carter, Carter & Johnson, of Atlanta, for defendant in error.

BECK, Presiding Justice.

The questions involved in this case by the objections raised as to the constitutionality of certain provisions of our law have been discussed by able text-writers and in many judicial opinions rendered by the courts of this country. In one part of his work on Constitutional Limitations, 1358-1370, the eminent writer, Justice Cooley, says: "We have said, that, though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulation of elections, including the prescribing in qualifications for suffrage, is left by the national constitution to the several States, except as it is provided by that instrument that the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The fifteenth amendment it will be seen, does not forbid denying the franchise to citizens except upon certain specified grounds, and it is matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent.

Minors, who equally with adult persons are citizens, are still excluded [as were also women before the adoption of the nineteenth amendment]; and sometimes persons who have been convicted of infamous crimes [are excluded]. * * * In some States laws will be found in existence which, either generally or in particular cases, deny the right to vote to those persons who lack a specified property qualification, or who do not pay taxes. In some States idiots and lunatics are also expressly excluded; and it has been supposed that these unfortunate classes, by the common political law of England and of this country, were excluded with women, minors, and aliens from exercising the right of suffrage, even though not prohibited therefrom by any express constitutional or statutory provision. Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature or otherwise than by an amendment of the constitution. One of the most common requirements is, that the party offering to vote shall reside within the district which is to be affected by the exercise of the right. If a State officer is to be chosen, the voter should be a resident of the State; and if a county, city or township officer, he should reside within such county, city, or township. This is the general rule; and for the more convenient determination of the right to vote, and to prevent fraud, it is now generally required that the elector shall only exercise within the municipality where he has his residence his right to participate in either local or general elections. Requiring him to vote among his neighbors, by whom he will likely be known, the opportunities for illegal or fraudulent voting will be less than if the voting were allowed to take place at a distance and among strangers. And wherever this is the requirement of the constitution, any statute permitting voters to deposit their ballots elsewhere must necessarily be void. * * *

"'While it is true that the legislature cannot add to the constitutional qualification of electors, it must nevertheless devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein. For this purpose the times of holding elections, the manner of conducting them and of ascertaining the result, are prescribed, and heavy penalties are imposed upon those who shall vote illegally, or instigate others to do so, or who shall attempt to preclude a fair election or to falsify the result. The propriety, and indeed the necessity, of such regulations are undisputed. In some of the States it has also been regarded as important that lists of voters should be prepared before the day of election, in which should be registered the name of every person qualified to vote. Under such a regulation, the officers whose duty it is to administer the election laws are enabled to proceed with more deliberation in the discharge of their duties, and to avoid the haste and confusion that must attend the determination on election day of the various and sometimes difficult questions concerning the right of individuals to exercise this important franchise. Electors, also, by means of this registry, are notified in advance what persons claim the right to vote, and are enabled to make the necessary examination to determine whether the claim is well founded, and to exercise the right of challenge if satisfied any person registered is unqualified. When the constitution has established no such rule, and is entirely silent on the subject, it has sometimes been claimed that the statute requiring voters to be registered before the day of election, and excluding from the right all whose names do not appear upon the list, was unconstitutional and void, as adding another test to the qualifications of electors which the constitution has prescribed, and as having the effect, where electors are not registered, to exclude from

voting persons who have an absolute right to that franchise by the fundamental law. This position, however, has not been generally accepted as sound by the courts. The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the legislature, unless forbidden. Many resting upon the same principle are always prescribed, and have never been supposed to be open to objection. Although the constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls, and there deposit their ballots, and not elsewhere, was a violation of the constitution, because subscribing an additional qualificaiton, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential. And where the law requires such a registry, and forbids the reception of votes from any persons not registered, an election in a township where no such registry has ever been made will be void, and cannot be sustained by making proof that none in fact but duly qualified electors have voted. It is no answer that such a rule may enable the registry officers, by neglecting their duty, to disfranchise the electors altogether; the remedy of the electors is by proceedings to compel the performance of the duty; and the statute, being imperative and mandatory, cannot be disregarded. The danger, however, of any such misconduct on the part of officers is comparatively small, when the duty is entrusted to those who are

chosen in the locality where the registry is to be made, and who are consequently immediately responsible to those who are interested in being registered.

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void."

And the same text-writer, in his work on Taxation (4th Ed.) vol. 4, pp. 3497-3507, says: "A capitation or poll-tax is a tax on the poll without reference to property, business or other circumstances. It is imposed numerically upon citizens without reference to their capacity to sustain the burden. A poll or capitation tax is not a tax upon property but is a tax against the person. However, a poll-tax, although not a tax on property, is nevertheless a tax within constitutional and statutory provisions in relation to taxes. * * * Capitation or poll-taxes are generally regarded as a proper means for raising revenue for public purposes. The legislature of a State ordinarily has power to impose a poll-tax, in the absence of direct constitutional prohibition or limitation, and constitutional objections have for the most part been overruled and the imposition of the tax held constitutional. In some States the constitution itself expressly authorizes or levies a poll-tax; but constitutional provisions relating to capitation taxes are generally not self-executing. * * * It is generally held that the requirement in a State constitution that taxes shall be equal and uniform does not apply to poll-taxes. * * * A poll-tax on males does not violate the constitutional provision because of discrimination on account of sex. * * * It is within the power of the legislature to make the payment of poll-taxes a condition precedent to the right to vote."

We have made the above lengthy quotations from Mr. Cooley's works on "Constitutional Limitations" and "Taxation" because in a brief way the principles laid down by the text-writer and the cases cited in the lengthy annotations thereto cover the substantial questions in this record. In addition, see also the following authorities: Frieszleben v. Shallcross, 9 Houst. (Del.) 1, 19 A. 576, 8 L.R.A. 337; Short v. State of Maryland, 80 Md. 392, 31 A. 322, 29 L.R.A. 404; Hawkins v. Hawkins, 350 Ill. 227, 183 N.E. 9; United States v. Reese, 92 U.S. 214, 23 L.Ed. 563; Thurston County v. Tenino Stone Quarries, 44 Wash. 351, 87 P. 634, 9 L.R.A. (N.S.) 306, 12 Ann. Cas. 314; Peacock & Co. v. Pratt (C.C.A.) 121 F. 772, 775; La Belle Iron Works v. U. S., 256 U.S. 377, 41 S. Ct. 528, 65 L.Ed. 998; Pohl v. Chicago, M. & St. P. R. Co., 52 Mont. 572, 160 P. 515; Olander v. Hollowell, 193 Iowa, 979, 188 N.W. 667; State ex rel. Atty.-Gen. v. Dillon, 32 Fla. 545, 14 So. 383, 22 L.R.A. 124; 20 C.J. 76, Sec. 37; McMahon v. Mayor, etc., of Savannah, 66 Ga. 217, 42 Am. Rep. 65. It follows from what is said above that the court did not err in sustaining the motion to dismiss the petition in this case.

Judgment affirmed.

All the Justices concur, except ATKINSON, J., absent because of illness.